IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 8770 of 2007(R)

PETITIONERS:

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1. DR.K.R.RAJAPPAN, S/O K.R.RAMAN,
   AGED 76 YEARS, 'THAMASA',
   PALARIVATTOM, COCHIN-25.

2. C.K.NALINI, W/O DR.K.R.RAJAPPAN,
   AGED 62 YEARS, 'THAMASA',
   PALARIVATTOM, COCHIN-25.

BY ADV. SRI.V.B.HARI NARAYANAN
SMT.M.J.RAJASREE

RESPONDENTS:

1.THE STATE OF KERALA, REP. BY THE
SECRETARY TO THE LOCAL SELF GOVT.(M)DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2.THE REGIONAL TOWN PLANNER,
REGIONAL TOWN PLANNING OFFICE,
ERNAKULAM.

3.KALAMASSERRY MUNICIPALITY,
REP. BY ITS SECRETARY.

R1-R2 BY GOVT. PLEADER SMT.T.B.RAMANI
R3 BY ADV.MR.M.K.ABOOBACKER, S.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.8770 of 2007

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Dated: 15th March, 2007

JUDGMENT

The petitioners who are aggrieved by rejection of their application for building permit for construction of a multi storied apartment complex within the limits of Thrikkakara village has filed this Writ Petition arraying the State, the Regional Town Planner, Ernakulam and the Kalamassery Municipality as respondents on various grounds seeking inter alia a writ of certiorari quashing Ext.P1 order issued by the third respondent-Municipality rejecting their application and for issuance of a writ of mandamus commanding the third respondent to reconsider the application dated 31.7.2006 in accordance with the floor area ratio specified in the Kerala Municipality Building Rules, 1999. The other prayers sought for in the Writ Petition are a declaration that the third respondent-Municipality is bound to follow the provisions under the Kerala Municipality Building Rules, 1999 while determining the floor area ratio and a further declaration that the provisions contained in the structure plan of 1991 is not applicable for deciding the floor area ratio while considering approval of building construction plans submitted for construction of buildings within the area of the third respondent-Municipality. The issue which arises for consideration in this case is

whether as to how the floor area ratio is to be worked out, whether it should be on the basis of the Kerala Municipality Building Rules, 1999 or on the basis of the structure plan notified in 1991 for the area of the central city, Kochi which takes in local areas of Kochi Corporation, Tripunithura Municipality, Kalamassery Municipality which was formerly Kalamassery Panchayat and 9 other Panchayats in Ernakulam District. Ext.P1 order issued by the third respondent-Municipality dated 25.10.2006 will show that the application for building permit along with plans were submitted by the petitioners to the Municipality as early as on 31.7.2006. The reason for rejection is that the Municipality is unable to consider the application favourably since the floor area ratio as per the plans is the one provided under the Kerala Municipality Building Rules, 1999 and since the Government has passed G.O.(P) NO.2121/2006/L.S.G.D. dated 28.8.2006. The petitioners point out that the Government on the basis of the request made by the builders operating in the area covered by structure plan 1991 and by the general public and also by the local authorities concerned had clarified on 31.12.2004 that in the matter of F.A.R. the provisions of the Kerala Municipality Building Rules, 1999 will prevail over the structure plan 1991. But the

Government later by the order referred to in Ext.P1 cancelled the earlier order on 31.12.2004. The petitioners point out that when local authorities to which the structure plan 1991 is applicable started rejecting the applications for building permit on the basis of the Government Order dated 28.8.2006, several builders approached this court and filed W.P.C.No.25478 of 2006 and other writ petitions. The petitioners point out that this court in the judgment in W.P.C.No.25478 of 2006 has held that at least as far as the applications submitted by builders who were party in that case prior to 28.8.2006 and till the date of issuance of the Government Order dated 28.8.2006 (the order which had been produced in that case as Ext.P7), the applications will be considered and decided in accordance with the floor area ratio permitted under K.M.B.R.1999. The petitioners point out that as regards the applications subsequent to 28.8.2006 this court directed the concerned local authorities to process those applications and pass orders to the extent of permitting constructions with the F.A.R. permitted under the structure plan 1991.

2. I have heard the submissions of Mr.V.B.Harinarayan, counsel for the petitioners and Mr.M.K.Aboobacker, Standing Counsel for the

Kalamassery Municipality. I have heard the submissions of the learned Government Pleader also for respondents 1 and 2.

3. Mr.Harinarayan, counsel for the petitioners has placed before me a copy of the judgment in W.P.C.No.25478 of 2006 and I am convinced that the issue raised by the petitioners has been decided was the issue which was considered in that judgment also. Since it is clear on a reading of Ext.P1 itself that the applications submitted by the petitioners were dated 31.7.2006, it has only to be declared that the petitioners are entitled for the benefit of the judgment in W.P.C.No.25478 of 2006. Under these circumstances quashing Ext.P1, the Writ Petition will stand allowed directing the third respondent-Municipality to pass orders on the building permit applications submitted by the petitioners in the light of the directions and observations contained in my judgment in W.P.C.No.25478 of 2006. Fresh orders as directed above will be issued by the third respondent-Municipality within three weeks of receiving a copy of this judgment. The petitioners will furnish a copy of the judgment in W.P.C.No.25478 of 2006 also before the third respondent.

srd **PIUS C.KURIAKOSE, JUDGE**